

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Microbes, Inc. and Rhizogen L.L.C.	§	
	§	
	§	Civil Action No. 2:09-CV-237
Plaintiffs,	§	
	§	
	§	
	§	
The Espoma Company, Advanced Microbial Solutions L.L.C., and Espoma Nursery, Inc.	§	
	§	
	§	
	§	
Defendants.	§	

ANSWER WITH AFFIRMATIVE DEFENSES OF

DEFENDANT THE ESPOMA COMPANY.

Defendant The Espoma Company ("Espoma") answers the allegations of the Plaintiffs and pleads affirmative defenses as follows:

THE PARTIES

1-5. Espoma does not know, but will accept as being true unless corrected by another party, the allegations of paragraphs 1-4. Espoma admits the allegations of paragraph 3 concerning Espoma as a party.

JURISDICTION AND VENUE

6-9. Espoma denies all allegations of infringement and inducing infringement made in these paragraphs. Espoma further denies the allegation in paragraph 8 that Espoma has entered

into a business relationship with Espoma. Calloway's purchases Espoma products from a third party distributorship. However, Espoma does not contest personal or subject matter jurisdiction or the propriety of venue.

PATENT INFRINGEMENT

10. Espoma incorporates its answers to Paragraphs 1-9.

11. For purposes of this litigation, Espoma admits the allegations of paragraph 11, except for the allegation that the '994 patent was duly and legally issued, which it denies.

12. Espoma has never seen the alleged license agreement and has no means of access to it, and consequently lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Espoma lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

JURY DEMAND

18. Admitted.

AFFIRMATIVE DEFENSES

19. The products sold by Espoma do not infringe any claim in the '994 patent.
20. Some or all of the claims of the '994 patent may be invalid for failure to satisfy one or more of the conditions for patentability set forth in Part II of Title 35-Patents, United States Code.
21. Some or all of the claims of the '994 patent may be invalid for failure to comply with one or more requirements of 35 U.S.C. §§ 112.
22. The '994 patent may be invalid through failure to name all persons who were inventors of the claimed subject matter.

PRAYER FOR RELIEF

Espoma asks for entry of judgment that:

- A. It has not infringed the '994 patent.
- B. The '994 patent is invalid.
- C. If the '994 patent is infringed and valid, Espoma has not caused any actual damages to the Plaintiffs.

- D. If Espoma is a prevailing party, payment to Espoma of its costs and reasonable attorneys' fees in defending this action, and such other relief as the Court deems just and equitable.

Dated: 06 October 2009

Respectfully

/s/ John J. Marshall
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Lead Counsel for The Espoma Company

CERTIFICATE OF SERVICE

I certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 6th day of October, 2009. Any other counsel of record will be served by first class mail.

/s/ John J. Marshall
John J. Marshall